

Internal Revenue Service, Treasury

§ 1.414(r)-7

(ii) Under these facts, Employer A is not permitted to apply the method of allocation in paragraph (c)(2)(ii) of this section, because none of its qualified separate lines of business satisfies the 50 percent requirement in paragraph (c)(3)(ii) of this section.

Example 2. The facts are the same as in *Example 1*, except that, after allocating all residual shared employees to the ski equipment line of business, the software, ski equipment and health food supplier lines of business each would satisfy the statutory safe harbor of § 1.414(r)-5(b), and that the real estate development line of business would satisfy the minimum or maximum benefits safe harbor of § 1.414(r)-5(g). Under these facts, Employer A is permitted to apply the method of allocation in this paragraph (c)(2) to allocate all its residual shared employees to the ski equipment line of business, because the employee assignment percentage

of the ski equipment line of business exceeds 25 percent and each qualified separate line of business satisfies either the statutory safe harbor of § 1.414(r)-5(b) or the minimum or maximum benefits safe harbor of § 1.414(r)-5(g).

Example 3. (i) The facts are the same as in *Example 1*, except that, Employer A chooses not to satisfy the minimum or maximum benefits safe harbor of § 1.414(r)-5(g). Instead, Employer A combines the real estate developer and ski equipment manufacturer into a single line of business. As a result, Employer A has three qualified separate lines of business as determined under § 1.414(r)-1(b). Assume that no residual shared employee becomes a substantial-service employee as a result of the new combination. Employer A's substantial-service employees are assigned among Employer A's qualified separate lines of business as follows:

	Software developer	Health food	Real estate/ski equipment
Substantial-Service Employees	2,500	1,000	6,500
Percentage Assigned to QSLOB	25%	10%	65%

(ii) Under these facts, Employer A is permitted to apply the method of allocation in this paragraph (c)(2) to allocate all its residual shared employees to the combined real estate development and ski equipment manufacturing line of business, because more than 50 percent of Employer A's substantial-service employees that are taken into account for the first testing day are assigned to that qualified separate line of business.

Example 4. (i) The facts are the same as in *Example 1*, except that, of the remaining 11,000 employees of Employer A, 10,000 employees are substantial-service employees who are collectively bargained employees. Pursuant to paragraph (b) of this section, the 10,000 substantial-service employees and the 10,000 substantial-service employees who are collectively bargained employees are assigned among Employer A's qualified separate lines of business as follows:

	Software developer	Health food	Real estate	Ski equipment
Substantial-Service Employees	2,500	1,000	2,500	4,000
Percentage of total substantial-service employees assigned to QSLOB	25%	10%	25%	40%
Substantial-Service Employees (including collectively bargained employees)	2,500	1,000	2,500	14,000
Percentage of total employees (including collectively bargained employees) assigned to QSLOB	12.5%	5%	12.5%	70%

(ii) Thus, the ski equipment line of business satisfies the 25-percent threshold in paragraph (c)(2)(iv) of this section. In addition, the ski equipment's percentage of substantial-service employees is at least 60 percent when taking into account substantial-service employees who are collectively bargained employees and therefore satisfies the requirement under paragraph (c)(2)(iv)(B) of this section. Under these facts, Employer A is permitted to apply the method of allocation in this paragraph (c)(2) to allocate all

its residual shared employees to the ski equipment line of business.

(3) *Pro-rata method of allocation*—(i) *In general.* Under the method of allocation in this paragraph (c)(3), all residual shared employees are allocated among an employer's qualified separate lines of business in proportion to the employee assignment percentage of each qualified separate line of business, as determined under paragraph (c)(2)(iii) of this section.

(ii) *Allocation procedure.* The procedure for allocating residual shared employees under the method in this paragraph (c)(3) is as follows—

(A) The number of highly compensated residual shared employees who are allocated to each qualified separate line of business is equal to the product determined by multiplying the total number of highly compensated residual shared employees of the employer by the employee assignment percentage determined with respect to the qualified separate line of business under paragraph (c)(3)(i) of this section;

(B) The number of nonhighly compensated residual shared employees who are allocated to each qualified separate line of business is equal to the product determined by multiplying the total number of nonhighly compensated residual shared employees of the employer by the employee assignment percentage determined with respect to the qualified separate line of business under paragraph (c)(3)(i) of this section;

(C) For purposes of this procedure, the employer is permitted to determine which highly compensated residual shares employees and which nonhighly compensated residual shared employees are allocated to each qualified separate line of business, provided that the required number of highly and nonhighly compensated residual shared employees are allocated to each qualified separate line of business.

(iii) *Examples.* The following example illustrates the application of the method of allocation in this paragraph (c)(4).

Example 1. The facts that are the same as in *Example 1* under paragraph (c)(2)(v) of this section except that there are no additional residual shared employees after the first testing day. Of Employer A's 1,000 residual shared employees, 800 are highly compensated employees and 200 are nonhighly compensated employees. Employer A applies the pro-rata method of allocation in this paragraph (c)(3). Under these facts, the 1,000 residual shared employees are allocated among Employer A's qualified separate lines of business as follows:

	Software developer	Health food	Real estate	Ski equipment
Substantial-Service Employees	2,500	1,000	2,500	4,000
Percentage Assigned to QSLOB ("employee assignment percentage")	25%	10%	25%	40%
Residual Shared HCEs	200	80	200	320
Allocated to QSLOB	(25% \times 800)	(10% \times 800)	(25% \times 800)	(40% \times 200)
Residual Shared NHCEs	50	20	50	80
Allocated to QSLOB	(25% \times 200)	(10% \times 200)	(25% \times 200)	(40% \times 200)

(4) *HCE percentage ratio method of allocation—(i) In general.* Under the method of allocation in this paragraph (c)(4), all residual shared employees are allocated among an employer's qualified separate lines of business according to the highly compensated employee percentage assignment ratio of each qualified separate line of business.

(ii) *Highly compensated employee percentage assignment ratio.* For purposes of this paragraph (c)(4), the highly compensated employee percentage assignment ratio of a qualified separate line of business is the fraction expressed as a percentage—

(A) The numerator of which is the percentage of all employees who have previously been assigned to the qualified separate line of business under this

section with respect to the testing year who are highly compensated employees; and

(B) The denominator of which is the percentage of all employees who have previously been assigned to any qualified separate line of business under this section with respect to the testing year who are highly compensated employees.

Thus, the highly compensated employee percentage assignment ratio of each of the employer's qualified separate lines of business is recalculated each time a residual shared employee is allocated to a qualified separate line of business under this paragraph (c)(5).

(iii) *Allocation procedure.* The procedure for allocating all residual shared

employees under the method in this paragraph (c)(4) is as follows—

(A) If there are any qualified separate lines of business with a highly compensated employee percentage assignment ratio of less than 50 percent (as determined immediately before the employee is allocated to a qualified separate line of business), the highly compensated residual shared employee must be allocated to one of these qualified separate lines of business;

(B) If there are any qualified separate lines of business with a highly compensated employee percentage assignment ratio of greater than 200 percent (as determined immediately before the employee is allocated to a qualified separate line of business), the nonhighly compensated residual shared employee must be allocated to one of these qualified separate lines of business;

(C) If there are no qualified separate lines of business with a highly compensated employee percentage assignment ratio less than 50 percent, a highly compensated residual shared employee may be allocated to any qualified separate line of business with a highly compensated employee percentage assignment ratio of no more than 200 percent, provided that the employee's allocation to the qualified separate line of business does not cause its highly compensated employee percentage assignment ratio to exceed 200 percent (as determined immediately after the employee is allocated to the qualified separate line of business);

(D) If there are no qualified separate lines of business with a highly compensated employee percentage assignment ratio greater than 200 percent, a nonhighly compensated residual shared employee may be allocated to any qualified separate line of business with a highly compensated employee percentage assignment ratio of no less than 50 percent, provided that the employee's allocation to the qualified separate line of business does not cause its highly compensated employee percentage assignment ratio to fall below 50 percent (as determined immediately after the employee is allocated to the qualified separate line of business);

(E) For purposes of this procedure, the employer is permitted to determine

which highly compensated residual shared employees and which nonhighly compensated residual shared employees are allocated to each qualified separate line of business, provided that the requirements of this paragraph (c)(4)(iii) are satisfied.

(5) *Small group method*—(i) *In general.* Under the method of allocation provided for in this paragraph (c)(5), each residual shared employee is allocated to a qualified separate line of business chosen by the employer. This method does not apply unless all of the requirements of paragraphs (c)(5)(ii), (iii), and (iv) of this section are satisfied.

(ii) *Size of group.* The total number of the employer's residual shared employees allocated under this paragraph (c) must not exceed three percent of all of the employer's employees. For this purpose, the employer's employees include only those employees taken into account under paragraph (c)(2)(iii)(B) of this section.

(iii) *Composition of qualified separate line of business.* The qualified separate line of business to which the residual shared employee is allocated must have an employee assignment percentage under paragraph (c)(2)(iii) of this section of at least ten percent. In addition, the qualified separate line of business to which the residual shared employee is allocated must satisfy the statutory safe harbor under § 1.414(r)-5(b) after the employee is so allocated.

(iv) *Reasonable allocation.* The allocation of residual shared employees under the small group method provided for in this paragraph (c)(5) must be reasonable. Reasonable allocations generally include allocations that are based on the level of services that the residual shared employees provide to the employer's qualified separate lines of business, the similar treatment of similarly situated residual shared employees, and other bona fide business criteria; in contrast, an allocation that is designed to maximize benefits for select employees is not considered a reasonable allocation. For example, allocation of all residual shared employees who work in the same department, or at the same location, to the same qualified separate line of business would be an indication of reasonableness. However, allocation of a group of